

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 793

Z.C. CASE 95-17

(Text Amendment - 11 DCMR Section 3101, BZA Notice)

December 11, 1995

EMERGENCY ORDER

On December 11, 1995, the Zoning Commission for the District of Columbia considered a memorandum, dated December 11, 1995, from the Director of the Office of Zoning, requesting that the Commission amend, on an emergency basis, the text of Section 3101 of the Zoning Regulations, Title 11, D.C. Municipal Regulations.

Subsection 3101.6 sets out certain notice requirements for hearings before the Board of Zoning Adjustment (BZA). The requested amendment would authorize the Board of Zoning Adjustment to waive the provision of the subsection which requires publication of notice in the D.C. Register under certain circumstances. For the reasons set forth in this order, the Zoning Commission decided to effect emergency rulemaking to amend 11 DCMR 3101.

Whereas, Subsection 3101.6 of the Zoning Regulations (Title 11, DCMR) now requires that notice of a hearing before the BZA be published in the D.C. Register at least 40 days in advance of the hearing; and

Whereas, the BZA may not waive the specific requirements of the Regulations; and

Whereas, the current financial crisis affecting the District Government has resulted in the suspension, at least temporarily, of the publication of the D.C. Register; and

Whereas, no D.C. Register has appeared since the edition of November 3, 1995, and conversations with the staff of the Office of Documents and Administrative Issuances has given no firm indication as to when the editions of November 10, November 17, November 24, December 1 and December 8 may actually be available; and

Whereas, public hearings are scheduled before the BZA for December 20, 1995, and January 10 and January 17, 1996, for which notices were submitted to the D.C. Register for timely

publication but which have not yet appeared due to the failure of the D.C. Register to be printed; and

Whereas, unless the Commission amends the Regulations to allow the Board to proceed without notice in the D.C. Register, those hearings must be cancelled and the schedule for future hearings will also be cast in doubt; and

Whereas, as the Board has already determined because of staff and budgetary constraints that it cannot hold more than one hearing per month, rescheduling these three hearings means a delay in all other cases of at least three months; and

Whereas, neither the Zoning Act nor the Administrative Procedure Act requires publication of notice of a public hearing in the D.C. Register; and

Whereas, if the Regulations are amended, and if the Board determines that other notice provisions of the Regulations have been met, that the rights of parties are not prejudiced and that good cause exists, the Board may waive the requirement under the Regulations to publish notice in the D.C. Register; and

Whereas, the continued timely and effective functioning of the zoning process through the BZA requires that the Board be able to hear cases on a continuing basis; and

Whereas, Section 5-413 of the D.C. Code establishes the authority of the Zoning Commission "to promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia;" and

Whereas, Section 1-1506(c) of the D.C. Code authorizes the Zoning Commission to take emergency action for a period not to exceed 120 days "for the immediate preservation of the public peace, health, safety, welfare, or morals;" and

Whereas, Section 1-1538(b) of the D.C. Code allows for an emergency rule to become effective prior to publication in the D.C. Register;

Now, Therefore, the Zoning Commission for the District of Columbia resolves that an emergency exists that requires an immediate amendment to the Zoning Regulations to protect the general welfare of the District of Columbia.

It is therefore **ORDERED** that 11 DCMR Section 3101 is amended on an emergency basis as follows:

1. Add a new Subsection 3101.7 to read as follows:

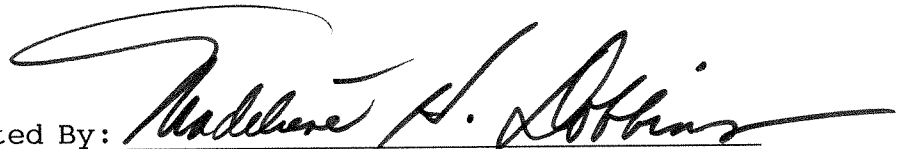
3101.7 The Board may, for good cause shown, waive the requirement of paragraph 3101.6(a) to publish notice in the D.C. Register, if it determines that all other provisions of Subsection 3101.6 have been met and that the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

2. Renumber existing Subsections 3101.7 and 3101.8 to 3101.8 and 3101.9, respectively.

This amendment to the District of Columbia Municipal Regulations, Title 11, Zoning, shall take effect immediately and shall remain in effect for a period not to exceed 120 days, that is, from December 11, 1995 through April 9, 1996.

This emergency rulemaking was adopted by the Zoning Commission at the public meeting on December 11, 1995 by a vote of 4-0: (William L. Ensign, John G. Parsons, Maybelle Taylor Bennett to adopt; Jerrily R. Kress to adopt by absentee vote).

Attested By:



MADELIENE H. DOBBINS
Director
Office of Zoning